

**REMARKS**

Claims 1-27 are pending in this application. Claims 1, 25, and 26 are the independent claims.

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

**Request for Acknowledgments**

Applicant respectfully notes that the present action does not indicate that the claim to foreign priority under 35 U.S.C. §119 has been acknowledged or that certified copies of all priority documents have been received by the U.S.P.T.O. Applicant respectfully requests that the Examiner's next communication include an indication as to the claim to foreign priority under 35 U.S.C. §119 and an acknowledgement of receipt of the certified copies of all priority documents.

Applicant also respectfully notes that the present action does not indicate that the drawings have been accepted by the Examiner. Applicant respectfully requests that the Examiner's next communication include an indication as to the acceptability of the filed drawings or as to any perceived deficiencies so that the Applicant may have a full and fair opportunity to submit appropriate amendments and/or corrections to the drawings.

**Election/Restriction Requirement**

Applicant appreciates that claim 26 has been *rejoined* and examined in this Office Action. However, claim 25 has not been examined, and the Examiner continues to allege that claim 25 is directed a non-elected invention. Accordingly, Applicant respectfully reserves the right to file a divisional application directed to the non-elected claim.

**Claim Rejections - 35 U.S.C. § 102**

Claims 1-3, 5, 6, 10, 11, 13, 18, 20, 23, 24, 26 and 27 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,878,402 to Brewster et al. ("the Brewster reference"). Applicant respectfully traverses this rejection for the reasons discussed below.

As stated previously, Applicant respectfully submits that the Brewster reference fails to disclose, or even suggest, *inter alia*, an analyzer device for measuring an amount of at least one constituent of solid feed to be fed to said animals, as recited in claim 1.

In the outstanding Final Office Action, the Examiner maintained his rejection that "the feedbunk reader" of Brewster corresponds to the claimed analyzer device that measures an amount of at least one constituent of solid feed. Applicant continues to respectfully disagree.

Specifically, Applicant respectfully submits the Brewster reference only discloses a system for feed rationing and feeding thereof, and fails to disclose or suggest a "feed content analysis." In other words, the "feedbunk reader" of Brewster is a meter which measures the amount of consumed fodder in a pen, (*see e.g., col. 12, lines 51-63*), instead of measuring the constituent of the feed (e.g., any of vitamins, minerals, protein, dry matter, fiber, particularly neutral detergent fiber (NDF), moisture, fat, starch, TKN, crude fiber, acid detergent fiber (ADF), and/or lignin according to relevant ISO, EC and AOAC standards).

Further, although the Brewster reference discusses different feed mixtures and their nutritional contents, these contents are not disclosed as being measured. The

analysis of the feed mixtures could e.g., be supplied by the feed providers or obtained elsewhere, which is precisely a problem being solved by the system of independent claim 1 (*see e.g., page 2, lines 10-21 of the originally filed disclosure*). The feedbunk reader of Brewster is merely provided for measuring how much an animal has eaten of a given ration and this is recorded and used in the management of the feed. Hence, the feedbunk reader does not measure the amount of at least one constituent of solid feed to be fed to the animals.

Further, in the "Response to Arguments" section on page 13 of the Final Office Action, the Examiner asserted that:

...col. 14, lines 29-50, dry matter, which is claimed by applicant. In addition, the word nutrition itself should clearly defined that the ingredients will involve some sort of vitamins/minerals provided for the animals to maintain proper nutrition for the animals. The ingredients provided to the animals are analyzed by various analyzer devices 17, 18, 19, 20, all working together to come up with the proper amount of constituent of solid feed to provide for the animals.

However, Applicant respectfully disagrees for at least the reason that the alleged "dry matter" content of Brewster is not measured. Instead, as clearly stated in col. 14, lines 29-50 of Brewster, the Ration Master File measures the dry matter for type of ration and relative amounts of ration to be recorded, and the total amount of assigned feed ration to be delivered over the respective feeding cycles. Therefore, although the Brewster reference may disclose different feed mixtures and their nutritional contents; it is submitted that the content itself of the feed is not disclosed as being measured.

Moreover, the computer systems 17-20 of Brewster, as allegedly being the claimed "analyzer device," is not an analyzer that measures an amount of at least one constituent of solid feed. Applicant submits that systems 17-20 are merely different computer systems, not systems for measuring amounts of constituents in the feed.

For instance, system 17 is used for a feedbunk reading computer system, system 18 is used for a feed mill computer system, system 19 is used for a feed lot veterinary computer system<sup>1</sup>, and system 20 is used for a feed lot nutrition computer system.<sup>2</sup>

Further, the Examiner asserts that “the feed ration analysis, the veterinary analysis, and the nutrition analysis, all relate to determination of amount of at least one constituent of solid feed to the animals.”<sup>3</sup> However, it is submitted that the “feed ration analysis,” the “veterinary analysis,” and the “nutrition analysis” do not analyze the content of the solid feed. As stated previously, the veterinary analysis and nutrition analysis only describes a “general, computer-network 15 [having] feedbunk reading computer system 17, feed mill computer system 18, feedlot veterinary system 19, feedlot nutrition computer system 20, feedlot management computer system 21A, financial accounting computer system 21B and feed delivery vehicle computer systems 22A, 22B and 22N” (*see col. 6, lines 6-12*).

Accordingly, Applicant respectfully submits that the Brewster reference fails to disclose, or even suggest, *inter alia*, “an analyzer device provided on the farm for measuring in real time or near real time an amount of at least one constituent of solid feed to be fed to said animals” (*emphasis added*), as recited in amended claim 1.

Therefore, contrary to the Examiner’s contention, the Brewster reference does not disclose or suggest each and every element of claim 1. Since the Brewster reference fails to disclose each and every element of claim 1, it cannot provide a basis

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<sup>1</sup> The feedlot veterinary computer system 19 includes a “routine which carry out various data processing and transfer operations relating to veterinary health care of the cattle” (col. 10, lines 21-58). Therefore, the feedlot veterinary computer system is not related to analyzing the feed.

<sup>2</sup> The feedlot nutrition computer system 20 includes “different routines which carry out various data processing and transfer operation relating to the diet and nutrition of the cattle” (col. 11, lines 22-25). Therefore, the feedlot nutrition computer system is not related to analyzing the feed.

for a rejection under 35 U.S.C. §102(b) and, thus, is allowable. Claims 2, 3, 5, 6, 10, 11, 13, 18, 20, 23 and 24 depend from amended claim 1 and, therefore, allowable for the similar reasons discussed above with respect to claim 1.

Independent claim 26 recites language similar to claim 1. For example, claim 26 recites, *inter alia*, “said analyzer device, performed by a control device, being used on the farm for measuring in real time or near real time, repeatedly, and at least once a day the amount of at least one constituent of solid feed to be fed to said animals.” Accordingly, Applicant respectfully submits that this claim is allowable for at least similar reasons to those discussed above with respect to claim 1.

For at least these reasons, the Examiner is respectfully requested to reconsider and withdraw the §102(b) rejection of claims 1-3, 5, 6, 10, 11, 13, 18, 20, 23, 24, 26, and 27.

### **Claim Rejections - 35 U.S.C. § 103**

Claims 4, 12, 14-16 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brewster as applied to claim 1 above, and further in view of U.S. Patent No. 7,308,866 (“Birk”). Applicant respectfully traverses this rejection for the reasons discussed below.

Claims 4, 12, 14-16 and 19 are believed to be allowable for at least the reasons set forth above regarding claim 1. The Birk reference fails to provide the teachings noted above as missing from the Brewster reference. Since claims 4, 12, 14-16 and 19 are patentable at least by virtue of their dependency on independent claim 1, Applicant respectfully requests that the rejection of claims 4, 12 14-16 and 19 under 35 U.S.C. §103(a) be withdrawn.

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<sup>3</sup> See Final Office Action mailed December 14, 2009, page 13, paragraph 9.

Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Brewster as applied to claim 1 above, and further in view of U.S. Patent No. 6,234,111 ("Ulman"). Applicant respectfully traverses this rejection for the reasons discussed below.

Claim 7 is believed to be allowable for at least the reasons set forth above regarding claim 1. The Ulman reference fails to provide the teachings noted above as missing from the Brewster reference. Since claim 7 is patentable at least by virtue of its dependency on independent claim 1, Applicant respectfully requests that the rejection of claim 7 under 35 U.S.C. §103(a) be withdrawn.

Claims 8 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brewster as applied to claim 1 above, and further in view of U.S. Patent Application Publication No. 2005/0000457 ("Beck"). Applicant respectfully traverses this rejection for the reasons discussed below.

Claims 8 and 9 are believed to be allowable for at least the reasons set forth above regarding claim 1. The Beck reference fails to provide the teachings noted above as missing from the Brewster reference. Since claims 8 and 9 are patentable at least by virtue of their dependency on independent claim 1, Applicant respectfully requests that the rejection of claims 8 and 9 under 35 U.S.C. §103(a) be withdrawn.

Claims 17 and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brewster as applied to claim 1 above, and further in view of U.S. Patent No. 4,517,923 ("Palmer"). Applicant respectfully traverses this rejection for the reasons discussed below.

Claims 17 and 21 are believed to be allowable for at least the reasons set forth above regarding claim 1. The Palmer reference fails to provide the teachings noted above as missing from the Brewster reference. Since claims 17 and 21 are patentable at least by virtue of their dependency on independent claim 1, Applicant respectfully requests that the rejection of claims 17 and 21 under 35 U.S.C. §103(a) be withdrawn.

Claim 22 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Brewster as applied to claim 1 above, and further in view of U.S. Patent No. 5,355,833 ("Legrain"). Applicant respectfully traverses this rejection for the reasons discussed below.

Claim 22 is believed to be allowable for at least the reasons set forth above regarding claim 1. The Legrain reference fails to provide the teachings noted above as missing from the Brewster reference. Since claim 22 is patentable at least by virtue of their dependency on independent claim 1, Applicant respectfully requests that the rejection of claim 22 under 35 U.S.C. §103(a) be withdrawn.

#### **Request for Interview**

Applicant respectfully requests, prior to the issuance of an action on the merits, that the Examiner grant an interview (telephonic or in-person) with Applicant's representative in order to discuss the Office Action, and the differences between the cited prior art and the subject matter cited in the claims.

Applicant's representative will telephone the Examiner in the near future in an attempt to schedule this interview. However, as Applicant's representative cannot anticipate when this action will be scheduled for further action by the Examiner, it is requested that the Examiner contact Applicant's representative by telephone, at the

number given below should a specific date for the interview have not been scheduled when the Examiner takes this action up for further action. Every effort will be made to meet the Examiner's scheduling preference.

### **CONCLUSION**

In view of the above remarks and amendments, Applicant respectfully submits that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. Further, the above remarks demonstrate the failings of the outstanding rejections, and are sufficient to overcome the rejections. However, these remarks are not intended to, nor need they, comprehensively address each and every reason for the patentability of the claimed subject matter over the applied prior art. Accordingly, Applicant does not contend that the claims are patentable solely on the basis of the particular claim elements discussed above.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned, at the telephone number below.

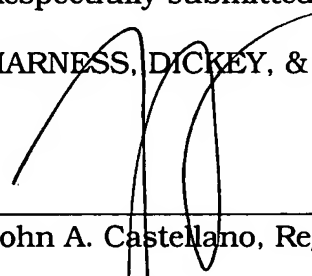


If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By

  
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John A. Castellano, Reg. No. 35,094

P.O. Box 8910  
Reston, Virginia 20195  
(703) 668-8000

JAC/DJC:has